



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking into the Review
of the California High Cost Fund B Program

R.06-06-028
(Filed June 29, 2006)

**OPENING COMMENTS OF THE DIVISION OF RATEPAYER
ADVOCATES ON THE PROPOSED DECISION ADOPTING THE
“CALIFORNIA ADVANCED SERVICES FUND”**

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SUBJECT INDEX OF RECOMMENDED CHANGES

As discussed in these Opening Comments and specified in the Appendix (which proposes modifications to Findings of Fact and Conclusions of Law), DRA recommends the following changes to the Proposed Decision (PD):

- Obtain authority from the Legislature to create the California Advanced Services Fund (CASF). As currently proposed, the legal basis for the CASF is ambiguous and should be clarified.
- Include in the criteria for approving grant requests consideration of the “need” for government-funded broadband infrastructure. For example, areas that are less economic to serve should be given priority over other areas.
- Applicants should offer a pricing commitment for stand-alone broadband service for 5 years. The same pricing commitment should be available for low-income customers for an additional 5 years.
- Minimum broadband speed requirements should be based on actual speed availability, rather than potential speed availability.
- Prior to implementation, adopt requirements for what constitutes “voice services.”
- Prior to implementation, adopt penalties for failures to meet commitments and Commission requirements.
- Prevent “double dipping” by establishing, as a condition of receiving CASF funds, that a provider cannot receive state high-cost support (CHCF-A or CHCF-B) for the same CBGs for which it receives a CASF grant.

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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits these Opening Comments on the Proposed Decision of Commissioner Chong regarding the “Interim Opinion Implementing California Advanced Services Fund” mailed on November 11, 2007 (PD).

I. INTRODUCTION

DRA supports the goal of bridging the “digital divide” to expand access to high-speed broadband services to as many Californians as possible. DRA has numerous concerns about the PD as currently written, however. The fundamental issue that the Commission has yet to resolve is how to ensure that the CASF and its funding mechanism are on solid legal ground. DRA continues to recommend that the Commission’s best course is to seek legislative authority that explicitly allows the creation of a broadband grant program, implementation of a funding source, and the jurisdictional authority necessary to oversee grants to all broadband providers, not just to “telephone corporations.” Without reasonable certainty that CASF grants are being provided legally, a certainty that is best obtained by legislative mandate, the Commission, interested parties, and potential applicants will be continually distracted from focusing on the public policy and implementation issues that are vital for creating a public-private

partnership that will provide long-term benefits in areas that are unlikely to experience affordable, high-quality broadband services without the involvement of public funds.

Aside from the legal ambiguity associated with the CASF, DRA recommends that the Commission consider the PD as just a first step toward developing an effective broadband grant program. There are critical aspects of the CASF program that have not yet been considered in any depth. For example, while the PD appears to identify the criteria that the Commission will use to approve broadband proposals, the Commission should allow further consideration of the appropriate criteria for refinement and possible modification. Parties should similarly have the opportunity to address the details of the “voice services” and “voluntary pricing commitment” requirements with which a winning applicant must comply. DRA urges the Commission to consider using both comments and a workshop/working group format, similar to the approach proposed by DRA for the B Fund reverse auctions, to address these issues. Because of the complexity of designing an effective broadband grant program, DRA notes that there may well be important implementation issues beyond those identified herein.

While DRA understands the need for a light regulatory touch, it is important to remember that, as currently proposed, the CASF will be very selective in providing public funds to private companies in areas that have not yet proven attractive to competitors. The PD further appears to propose the withdrawal of all Commission oversight of CASF recipients after five years. In essence, the Commission will be using ratepayer money to provide a significant competitive edge to certain companies for several years to come, a competitive edge that may end up precluding competitive entry in the future. The Commission has the responsibility to implement requirements and safeguards to ensure that long-term benefits will flow from the investment of public funds.

DRA discusses below modifications to the PD, as well as some outstanding issues that should be addressed in further proceedings before implementation of the CASF.

II. THE COMMISSION SHOULD CLARIFY THE LEGAL STATUS OF THE PROPOSED CASF

From a legal standpoint, parties have commented on three general approaches that the Commission could take to provide grants for broadband infrastructure. First, the approach that would likely result in the fastest implementation of a broadband grant program would be expansion of the B Fund by using funds collected through the CHCF-B surcharge on consumers' bills. Parties are almost unanimous in questioning the legality of this approach, however.¹ A second approach is for the Commission to create a broadband fund, pursuant to its current legal authority, that is separate and distinct from any of the Commission's other public purpose programs. The third legal approach, favored by almost all parties, is for the Commission to obtain explicit legislative authorization to create and administer a broadband fund.²

Unfortunately, the PD does not resolve these legal issues, but appears to straddle the first and second approaches by treating the CASF as an "expansion" of the B Fund program, and then creating a novel funding mechanism for the CASF that is frankly unclear. This lack of clarity translates into a legal ambiguity that will likely create a business uncertainty that will deter potential applicants and undermine the goals of the CASF. DRA reiterates that the best way to dispense once and for all with this legal ambiguity is to obtain authority to implement the CASF directly from the Legislature.

The PD creates legal uncertainty by characterizing the funding mechanism for the CASF in different ways that cannot be read consistently with each other. The PD adopts the legal conclusion that "Article XII of the California Constitution and Public Utilities Code § 701 provide sufficient legal authority for the Commission to establish the

¹ DRA Comments, 9/26/07, at 2, CCTA/Time Warner Comments, 9/26/07, at 1 and 3, SureWest Comments, 9/26/07, at 1, Small LECs Comments, 9/26/07, at 2, Verizon Comments, 9/26/07, at 1-3, T-Mobile Comments, 9/26/07, at 2, TURN Comments, 9/26/07, at 2 and 8, and Sprint Nextel Comments, 9/26/07, at 2.

² DRA Comments, 9/26/07, at 2, CCTA/Time Warner Comments, 9/26/07, at 1 and 3, SureWest Comments, 9/26/07, at 1, Small LECs Comments, 9/26/07, at 2, Verizon Comments, 9/26/07, at 1-3, T-Mobile Comments, 9/26/07, at 2, TURN Comments, 9/26/07, at 2 and 8, and Sprint Nextel Comments, 9/26/07, at 2.

California Advanced Services Fund.”³ Nevertheless, the PD never actually creates a new grant program, but characterizes the CASF as “an expansion”⁴ of, and “complement”⁵ to, the B Fund, and explicitly states that the CASF “is not a diversion or transfer from the CHCF-B to [a] separate fund.”⁶ Thus, the PD does not purport to create a new advanced services fund.

Some descriptions of the CASF funding mechanism, however, suggest that the Commission is in fact attempting to treat the CASF as a separate entity. In D.07-09-020, the Commission ordered a reduction in the “B-Fund retail surcharge” to 0.5% as of January 1, 2008.⁷ The PD would now fund the CASF program with a “redesignation”⁸ of “half of the B-Fund surcharge contribution”⁹ to the CASF. The PD also describes this as “an allocation”¹⁰ that is separate from the B Fund. While the PD does not modify D.07-09-020 to decrease the B Fund surcharge to 0.25% or create a CASF surcharge of 0.25%, the PD nevertheless allows carriers to “use the same surcharge line on customer bills for both the CHCF-B and the CASF,”¹¹ and explicitly states that “the Commission could decide to establish a separate CASF surcharge” in the future.¹² There is no precedent cited for this method of funding a Commission program (or the “expansion” of a program). Furthermore, the PD does not specify how this single surcharge line for both funds should appear on customers’ bills.

³ PD at 50 (COL 3).

⁴ PD at 51 (COL 8).

⁵ PD at 46 (FOF 5).

⁶ PD at 50 (COL 2).

⁷ D.07-09-020 at 132-33 (OP 5).

⁸ PD at 46 (FOF 8) and 51 (COL 6).

⁹ PD at 46 (FOF 8).

¹⁰ PD at 46 (FOF 5), 47 (FOF 17), and 52 (OP 1).

¹¹ PD at 46 (FOF 8) and 51 (COL 6). This authorization does not appear in the Ordering Paragraphs of the PD.

¹² PD at 46 (FOF 8).

In effect, the PD appears to sanction the collection of CASF money through the same line item surcharge that has appeared on ratepayers' bills for almost a decade, the money from which is dedicated in statute to another purpose. The PD does not require carriers to provide customer notice of this special "allocation" or "redesignation." Regardless of how the CASF and its funding mechanism are characterized, there are compelling arguments that the PD's proposal amounts to either (a) the use of B funds for another purpose, in violation of PU Code § 270(c), or (b) the creation of a new public purpose program and surcharge that have not been subject to proper notice and comment, and that will be hidden on customers' bills. In either event, adoption of the current PD will put the Commission on shaky legal ground, rendering the foundation of the CASF vulnerable to court challenges.

As many parties note, obtaining a legislative mandate for a broadband program would remove questions about the legality of a broadband fund, one of the primary concerns of the parties who commented.¹³ These concerns have the potential to discourage companies from participating in the CASF program because of the business risk that such grants may later be declared illegal and subject to revocation.¹⁴

Obtaining legislative approval may delay implementation of a broadband fund, but it is important to note that, apart from the legal issues, there are significant implementation issues that must be worked through, as discussed *infra*, before the Commission begins to give millions of public dollars to selective telephone corporations. While authorization of a Commission broadband fund wends its way through the necessary legislative process, the Commission could turn its focus to the complex public policy issues of a broadband grant program that must balance meeting a demonstrated public need for the long term, ensuring that public funds are used properly and

¹³ DRA Comments, 9/26/07, at 2, CCTA/Time Warner Comments, 9/26/07, at 1 and 3, SureWest Comments, 9/26/07, at 1, Small LECs Comments, 9/26/07, at 2, Verizon Comments, 9/26/07, at 1-3, T-Mobile Comments, 9/26/07, at 2, TURN Comments, 9/26/07, at 2 and 8, and Sprint Nextel Comments, 9/26/07, at 2.

¹⁴ See Sprint Nextel Comments, 9/26/07, at 2.

effectively, and interfering in the market as little as possible. Explicit legislation creating a broadband fund could also enable the Commission to better meet its policy goals by allowing CASF funds to go to any provider of broadband services (which otherwise meets the qualifications and requirements of the fund), rather than just to those who are willing and able to become “telephone corporations.”

As a fundamental matter, regardless of whether the Commission implements the CASF with authorization by the Legislature, DRA emphasizes that ratepayers should be fully informed about the purposes of the “contributions” collected through surcharges on their bills. Full disclosure would include a clear description of any additional surcharge, or any additional or alternative use of surcharge money. In light of the legal ambiguity of the CASF, the most prudent approach is for the Commission to authorize a separate line item for a CASF surcharge, state how the CASF surcharge should be identified, and require carriers to provide a description of the surcharge in a customer notice approved by the Commission.

III. CRITERIA FOR RECEIVING CASF FUNDS

DRA strongly urges the Commission to adopt procedures that will enable the Commission and parties to address the finer points of a CASF fund, such as the criteria for receiving CASF funds. The criteria for successfully obtaining a CASF grant should in some way include consideration of the “need” for government-funded broadband infrastructure in the proposed serving area. Using the CASF, the Commission should only fill those gaps that the competitive market has not filled and is unlikely to fill. When evaluating applications, the Commission should give priority to geographic areas that have a high demand for broadband, but are less economic to serve. In this sense, the Commission should make sure some provisions are in place to avoid “cherry-picking.”¹⁵ For example, CASF money should not go to areas in which carriers are already planning

¹⁵ See proposed FOF 22.C.

to provide service, nor should it go only to communities primarily comprised of wealthier consumers.¹⁶

DRA points out that the CASF may result in a broadband monopoly or duopoly in areas that would otherwise have limited or no access to high-speed broadband. While the CASF will thus help close the digital divide, it will also be altering the competitive nature of a deregulated market. The award of a funding subsidy for a period of years creates a competitive advantage, if not a de facto monopoly for the broadband service; the award of that subsidy for broadband may tangentially provide a competitive advantage (albeit indirect) for any of the associated services that make use of the physical plant (e.g. VoIP) or vertical services that are associated with the service provider (e.g. internet services such as Yahoo). In order to act responsibly, the Commission should ensure that the CASF is targeted first to locations in which there is enough demand to sustain a broadband offering, but in which carriers are unlikely to build out broadband facilities without an initial public investment in infrastructure. Therefore, in evaluating applications, the Commission should ensure that some kind of priority is given to geographic areas that have a demand for broadband, but are less economic to serve.

One of the most critical stages in the CASF proposed in the PD is determining whether an area is appropriate for public funding. In the absence of granular information about current broadband deployment, or of other resources that would inform the Commission about the status of broadband services in specific geographic areas, the Commission will unfortunately be somewhat at the mercy of the applicants as it attempts to verify claims that an area is unserved or underserved. It is therefore critical that any CASF applicant provide all of the information available to it relating to whether an area is unserved or underserved. If necessary, such information could be submitted under seal (e.g. if the work product of a third party was commissioned by the applicant). The Commission should also put applicants on notice that they must work with staff and interested parties to facilitate the process.

¹⁶ See proposed FOF 15.

Finally, DRA emphasizes the need to verify the financial soundness of a CASF applicant. If a broadband provider fails to have the financial means to fund its portion of the project, or if it fails to deliver the service, then not only will ratepayer money have been squandered, but the process potentially will deter other companies from entering the market.

IV. ONGOING REQUIREMENTS AND VERIFICATION

The PD should more directly define the process to clearly identify the data and information that is required through a verification process in order to receive further CASF funds. Such clarification is necessary both to inform any applicants of what services they must provide in order to continue receiving funding as well as to ensure that ratepayers receive the anticipated broadband benefit for their money. DRA recommends the following criteria as at least some of the crucial aspects that must be considered regarding the requirements of any carrier prior to accepting an application and disbursing funds.

A. The Commission Should Require A Voluntary Commitment For A Stand-alone Broadband Price

While DRA strongly agrees that the Commission should enforce any “voluntary pricing commitments” proposed by applicants. Without imposing a “broadband price cap,” DRA emphasizes that the Commission can and should look with skepticism at any application that does not have pricing commitments. Furthermore, the PD should go further and require a commitment to a “stand-alone broadband” service offered at a defined price. Compliance with such a requirement would be much easier to verify than a “voluntary” agreement about “pricing” that is defined by the applicant. For example, with variations in speed tiers and bundles, there is the potential for confusion in trying to determine whether a certain “pricing commitment” has been met. Requiring a carrier to maintain a certain “stand-alone broadband” rate would avoid this problem.

As discussed below, the stand-alone broadband price should also be available to low-income consumers for 10 years, even if the voluntary commitment for other consumers ends in 5 years. The Commission should maintain some oversight of the

provider with regard to the treatment of low-income customers because of the difficulty in preventing cherry-picking, both with regard to the geographic areas that CASF applicants first propose for funding, and with regard to the quality and rates of service provided within the selected CASF area during and after build-out. Video franchises in California that used to be negotiated with local franchising authorities, for example, often required that build-out be completed within a certain time frame in parts of the franchise territory that were economically disadvantaged. Assuming that the Commission will not be asking for similar requirements as a condition of CASF funding, the Commission should at least ensure that the broadband facilities provided using public funding continues to be affordable to low-income customers.

Finally, a pricing commitment may be “voluntary” in that a provider is offering it as part of its application. If that application is approved and the provider receives CASF funds in exchange for complying with the requirements of the CASF program, however, it is important to note that the applicant will essentially be entering into a contract with the Commission. Thus, a pricing commitment (and any other commitments made by the provider as a condition of receiving the funds) may be referred to as “voluntary,” but they become legal requirements that are enforceable against the provider.

B. Broadband Services Should Be Reliable and Verifiable

Speeds at 3 mbps download and 1 mbps upload may be adequate as minimum speeds, provided that broadband services at these speeds are guaranteed to actually be available most of the time.

Retail offerings of broadband services often advertise potential maximum speeds (*e.g.* offering broadband access at speeds up to a specific amount). The Commission should therefore specify that the minimum speed requirements for obtaining a CASF grant are actual speed requirements, not just speeds that a customer has the potential of reaching.

Furthermore, broadband access at the adopted speeds must be reliable and predictable. Having actual speeds of 3 mbps/1 mbps available only intermittently will not meet the Commission’s goals, such as the goal of enabling consumers to

telecommute, for example. The Commission should develop, through the workshop process described in the PD,¹⁷ appropriate measurements and definitions relating to actual speed and reliability so that it is clear to CASF applicants and recipients what they must do to meet these requirements. CASF recipients should track information about service outages and customer complaints associated with both voice and broadband services.

While the Commission's first instinct may be to reject any additional parameters related to broadband service quality, the reality is that such parameters are necessary in order for a "3 mps/1mbps minimum speed requirement" to mean anything. The Commission should take steps to ensure that public funds are not provided to build infrastructure that will soon become out-of-date. As the PD notes, residential customers in both the U.S. and other countries are being offered speeds that are many times higher than 3 mbps and 1 mbps.¹⁸ Thus, as a practical matter, a CASF recipient will likely use the most advanced, reliable technologies currently available, and it is therefore possible that the Commission and parties can identify basic, reasonable broadband service quality parameters that are will be consistent with the business plans of CASF recipients.

C. The Commission Should Adopt Clear Requirements For "Voice" Services

While the PD will require recipients to offer "voice" services, there is currently no definition of what constitutes "voice" services. The elements of the required voice services should be more specifically identified through additional proceedings, such as workshops. Because the voice offered by the CASF recipient may well be the only voice service available to customers in an unserved area, it should include E911, a specified voluntary pricing commitment that applies to all customers for at least 5 years and to low-income customers for at least 10 years (as discussed below), and some service quality standards.

¹⁷ PD at 29 (FOF 19), *See* proposed FOF 22.

¹⁸ PD at 35.

DRA is concerned that a CASF grant could be used to bypass payment of the surcharges required of other intrastate telephone services. The same concerns have caused the FCC to apply the contribution requirements of federal universal service to providers of VoIP services. The Commission should similarly take steps to protect California's public purpose programs by applying its surcharges to all providers of voice services, including VoIP providers, particularly if they receive Commission funding to build their underlying infrastructure. Without the surcharge requirements, providers would be able to circumvent the regulatory structure that has enabled California to maintain high penetration rates and valuable public purpose programs. It may be appropriate to base other regulatory requirements for voice services on the regulatory requirements currently applied to wireless carriers.

It should be clear that the Commission will have jurisdiction over disputes related to voice services, and jurisdiction over at least those broadband-related disputes that arise from failure to comply with the minimum requirements and commitments associated with the CASF funding.

The Commission should make it very clear in the decision, that the "voice services" requirement and any subsequent determinations of what these consist of in no way is intended to modify the definition of basic service for any other purposes. It would be procedurally inappropriate to modify the definition of basic service for other purposes in this CASF sub-phase of Phase II because of the lack of notice to interested parties that the issue is under consideration in this sub-phase.

D. The Commission Should Adopt Procedures For Violations Of CASF And Commission Requirements

DRA agrees with the PD's intention to distribute funds piecemeal, but the PD lacks clarity regarding penalties for failure to meet commitments and procedures to recover funds disbursed in violation of the Commission's rules or any current applicable laws. There must be defined penalties in place for failure of any CASF recipient to meet their commitments proposed in the accepted application. These penalties must be defined upfront to ensure that any applicants are serious about their proposals and know the

repercussions of failing to meet their own commitments. In addition to penalties, the Commission must establish a method for recovering any funds that were improperly used, in violation of Commission rules and state laws. Clearly defining these penalties and procedures will help ensure that ratepayer money is not wasted on an uneventful project.

E. Granular Data

The Commission should make every effort to obtain the most granular information about broadband infrastructure possible, such as the raw infrastructure data that some broadband providers have given to the Governor’s Broadband Task Force, in order to make informed decisions about the proposals of applicants. Without that information, the Commission will be dependent upon the applicant’s representations and any resources of interested parties to test the applicant’s representations. As discussed above, the Commission should therefore emphasize the importance of providing robust information about the nature of the “unserved” or “underserved area” and being responsive to the inquiries of Commission staff during the application and later verification processes.

F. The CASF Should Make Provisions For Low-Income Customers

DRA agrees that there should be a pricing commitment for a minimum amount of time in order for a broadband provider to receive ratepayer money for infrastructure build-out.¹⁹ DRA is not able to determine whether a 5-year commitment period is appropriate given the lack of data and evidentiary record. However, it must be made clear in the PD that any such time period should begin from the time that service is rolled out over the facilities, rather than beginning at the time of build out. If the time period is starts at the time of build-out, consumers would likely benefit from the pricing commitment for only two to three years, at most. Additionally, 5 years may or may not be an adequate time period. DRA has no data at this point as to the depreciation of broadband facilities, but does want to emphasize that while the CASF will help bridge

¹⁹ PD at 41 (FOF 32).

some of the gaps in the digital divide, it will be essentially be using public money to fund a monopoly situation. If one carrier receives ratepayer money to build out in a certain area, it renders it less likely that a competitor will enter that area to build infrastructure using solely their own funds.

Given these circumstances, as well as the primary public policy goals of this Commission and the Legislature, it seems reasonable that if a 5-year pricing commitment is adopted, then a 10-year pricing commitment for stand-alone broadband should be adopted for low-income customers.²⁰ This should in no way be misinterpreted as meaning that broadband should be included in the Universal Lifeline Telephone Service (ULTS) program or in the definition of “basic service.” Rather, DRA recommends that any customers who currently qualify for ULTS should be assured a pre-determined rate for stand-alone broadband for a minimum of 10 years in any CASF-funded area.

G. The Commission Should Consider The Interaction between High-Cost Funding and CASF Grants

The Commission should carefully consider the repercussions of allowing incumbent telephone corporations (ILECs) to win CASF bids, particularly if the ILEC applicant is already receiving CHCF-A or CHCF-B funds for CBGs in the nominated area. On the one hand, ILECs may be able to provide the lowest-cost bid because they have ratepayer-funded facilities which they merely need to extend and/or upgrade to provide broadband service to currently unserved or underserved areas. On the other hand, if the Commission approves an ILEC’s request for CASF funding for broadband build-out, that approval may have the effect of perpetuating a monopoly service provider situation. A diminution of competition would be contrary to the underlying premise of providing CASF grants in “underserved areas” in which a broadband provider is already providing service.

DRA is not opposed to allowing current recipients of high-cost funding (either CHCF-A or CHCF-B) to obtain CASF grants. However, the Commission must carefully

²⁰ See proposed FOF 23.

tailor its CASF bid process to take the receipt of high-cost subsidies into account as it crafts the CASF bidding and service rules. DRA urges the Commission to restrict ratepayer-funded subsidies from a high-cost fund to only those CBGs that CASF money is not supporting. Permitting draws from both CHCF and CASF funds would essentially create an opportunity for "double dipping" from ratepayer money. Thus, DRA recommends that, as a condition of accepting a CASF grant, a provider that receives high-cost funds for any CGBs in the CASF grant area should be required to relinquish the high cost support. At the very least, there should be a rebuttable presumption such that a recipient of high-cost fund support must present an affirmative showing of need – with cost data – in order to draw ratepayer money from both funds. Parameters for what this showing should consist of should be established in a further phase of this proceeding.

V. CONCLUSION

For all of the reasons discussed above, DRA recommends that the Commission seek legislative approval for funding and implementing the CASF program. It is apparent from the PD that several implementation issues must still be addressed. Thus, while seeking the legislative approval, the Commission should therefore implement the appropriate workshops and working groups to resolve the outstanding implementation issues, some of which DRA has identified above.

Respectfully submitted,

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APPENDIX

FINDINGS OF FACT

1. Pursuant to D. 07-09-020, parties were provided notice and opportunity to comment as to the merits and manner by which a mechanism could be implemented for eligible parties to qualify for funding to deploy broadband facilities in regions of California that are not currently being served, or that are underserved.

2. Ubiquitous deployment of broadband holds tremendous opportunities for consumers, technology providers, and content providers, and is important to the continued health and economic development in California.

3. Promoting deployment of additional broadband services within areas of California that are underserved or not served at all is consistent with universal service policies aimed at enhancing deployment of advanced services and bridging the “digital divide” as articulated in Pub. Util. Code §§ 709(c) and (d).

4. The creation of a California Advanced Services Fund would provide an effective tool to promote additional broadband services in regions that are not served or are underserved consistent with Pub. Util. Code § 709(c) and (d).

5. The California Advanced Services Fund will complement the CHCF-B, and help to promote universal service goals, but will not divert or transfer CHCF-B funds as the CASF funds collection will be allocated separately from the CHCF-B.

6. The funding of broadband infrastructure in high cost areas where there may be market failure may be the best way to take into account dramatic advances in telecommunications and information technologies and services, while ensuring the continued effectiveness of the universal service policies set forth by the Legislature.

7. Broadband deployment in California has a direct impact on economic output and employment.

8. Redesignating half of the B-Fund surcharge contribution originally adopted in D.07-09-020 for the CASF is the best way to fund the CASF as an initial matter. Carriers shall add a ~~may use the same~~ surcharge line on customer bills for ~~both the CHCF-B and the CASF~~ and provide a description of the CASF surcharge that is approved by the Commission. ~~In the future, the Commission could decide to establish a separate CASF surcharge but we find it is not necessary at this time as the CHCF-B mechanism is available and works well.~~

9. The programs covered by Section 270, et. seq. cover a myriad of topics and issues. The Commission has taken both formal and informal actions to adapt the programs to changed circumstances due to advances in technology and other factors have led to changes, including expansions of the programs since they were created.

10. The Commission has authority under Article XII of the California Constitution and Public Utilities Code § 701 to establish the California Advanced Services Fund.

11. Providing funding pursuant to Pub. Util. Code §§ 701 and 709 for deployment of broadband facilities in unserved and underserved high cost areas of California is necessary to meet the objectives of universal service.

12. Legislative direction recognizes that broadband services are and will be used to deliver universal telephone service now and in the future.

13. The Legislature and Governor have both clearly proclaimed the importance of high-quality telecommunications and advanced information and communication technologies.

14. All funds will be collected and appropriated consistent with Legislative direction related to existing universal service programs.

15. It is appropriate to dedicate limited funding into the deployment of broadband facilities in unserved and underserved high cost areas of California and to give preference to projects designated for areas that are not the target of other new broadband deployments that are going forward without subsidy support.

16. The California Advanced Services Fund will accelerate broadband deployment in high cost areas more rapidly than market forces alone.

17. The initial allocation to the California Advanced Services Fund will be \$100 million collected over a two year period beginning on January 1, 2008.

18. An application process would be an appropriate procedural vehicle for seeking funding support for a proposed area that is currently unserved or underserved by broadband services.

19. Commission staff will hold a workshop to develop the application process, ~~and~~ final evaluation criteria, and verification criteria, with the final evaluation criteria to be publicly noticed at least 45 days before the first CASF applications are due.

20. The initial deadline for the filing of applications by parties seeking CASF grants will be of June 2, 2008.

21. California Advanced Services Fund allocations shall be limited to a “telephone corporation” as defined under Pub. Util. Code § 234.

22. Applicants shall be required to submit the following data to the Commission, for each proposed broadband project, subject to appropriate confidentiality provisions:

A. Description of applicant’s current broadband infrastructure and map of current service area by census block group;

B. Description of proposed broadband project plan for which CASF funding is being requested, including download and upload speed capabilities of proposed facilities. Minimum speed standards shall be 3 MBPS download and 1

MBPS upload, and applicant's network shall be engineered to ensure that download and upload speeds do not fall below these minimum speed standards more often than a percentage availability target to be established through the workshop process described above in Finding of Fact 19.

C. Geographic locations by census block group where broadband facilities will be deployed. Boundaries of the specific area to be served by the project, with map by census block group, along with a verifiable showing that the area is unserved or underserved, and shall provide applicant's best available information concerning any new broadband deployments in the area that are currently underway or are in the planning stages;

D. Estimated number of potential new broadband subscribers, providing evidence of the expected take rate of the broadband service given the average income in the area and the proposed service price.

E. Schedule for deployment, with commitment to complete build out within 18-24 months of the grant of the application. Schedule shall identify major construction milestones that can be verified by Commission staff.

F. Proposed budget for the project, with a detailed breakdown of cost elements, and including source, amount, and availability of matching funds to be supplied by applicant, and the CASF grant amount requested. At least 60% matching funds must be supplied by applicant.

G. Proposed retail price per MBPS for new broadband service.

H. Pricing for the commitment to offer stand-alone broadband services to all households within the service area of the project for a period of 5 years, and to all low-income households within the service area of the project for a period of 10 years, and

I. Financial qualifications to meet commitments.

23. Recipients must also offer a basic voice service to customers within the service area of the broadband deployment subject to the CASF grant. Recipients must commit to offering such a service to any requesting household within the service area of the project for a period of no less than 5 years, and shall not be eligible for any additional support from the CHCF-B or CHCF-A for voice service within the area receiving the CASF subsidy grant.

24. For purposes of awards of California Advanced Services Fund support only, we expand the definition of qualifying "basic service" to include any form of voice-grade service, including that offered through a wireless or VoIP service.

25. A single broadband project shall consist of a group of contiguous CBGs in which service is to be offered.

26. A 3 MBPS/1MBPS speed standard is adopted as the benchmark for evaluating applications.

27. A broadband project must be completed within 24 months to receive California Advanced Services Fund awards.

28. Adequate assurance of the applicant's financial qualifications sufficient to assure the Commission of its ability to complete the project shall be submitted with the application or obtained by the Commission prior to the award of any project under the California Advanced Services Fund.

29. California Advanced Services Fund awards will not be restricted only to those areas currently designated as "high cost" for purposes of basic service support; however, the availability of CASF awards in other areas does not expand the areas for which basic voice-service support from the CHCF-B is available.

30. We shall not restrict the eligible areas for California Advanced Services Fund awards only to the major ILEC service territories currently covered by the B-Fund.

31. As a condition of receiving a California Advanced Services Fund award, the recipient should, for a five-year period, offer stand-alone broadband service according to the pricing commitment specified in the recipient's application to any residential household or small commercial business within the service territory covered by the deployment. The recipient should also, for a ten-year period, offer stand-alone broadband service according to the pricing commitment specified in the recipient's application to any low-income residential household within the service territory covered by the deployment.

32. Evaluation of requests will consider the prices at which applicants propose to offer broadband service and award will be conditioned on the applicant honoring the applicant's ~~voluntary~~ pricing commitments.

33. California Advanced Services awards will only be provided for authorized capital projects on approved broadband deployment projects, and shall not be used to pay for general operating or maintenance expenses.

34. Administration of the disbursement of California Advanced Services Funds is delegated to the Commission Staff to be administered consistent with the payment schedules and conditions herein.

35. California Advanced Services Fund recipients will be subject to specific audit or related verification requirements to verify that funds are spent in accordance with Commission requirements.

CONCLUSIONS OF LAW

1. Existing statutes provide the requisite authority for the Commission to support funding of broadband deployment under the approach adopted in this order.

2. Encouraging deployment of broadband through a CASF program will help to promote universal service goals, but is not a diversion or transfer from the CHCF-B to separate fund.

3. Article XII of the California Constitution and Public Utilities Code § 701 provide sufficient legal authority for the Commission to establish the California Advanced Services Fund.

4. Limited funding for deployment of broadband facilities in unserved and underserved areas of California is necessary to meet the objectives of universal service and is within the prescribed purpose of Pub. Util. Code §§ 701 and 709.

5. The Legislature and Governor have found the availability of high-quality telecommunications and advanced information and communication technologies important for the future prosperity of California.

6. The funds to be used by the CASF will be collected as part of the redesignated CHCF-B and CASF surcharge beginning on January 1, 2008. Carriers may use the same surcharge line on customer bills for both the CHCF-B and CASF.

7. Pub. Util. Code §§ 270(b) and 270(c) do not prohibit the expansion of existing programs.

8. As the CASF is not a transfer or diversion of funds to another fund or entity but is an expansion of an existing program, the limitations of § 270 do not apply.

9. California Advanced Services Fund allocations shall be limited to a “telephone corporation” as defined under Pub. Util. Code § 234.

10. The definition of qualifying “basic service” for the purposes of the California Advanced Services Fund is modified to include any form of voice-grade service, including that offered through a wireless or VoIP service; however, this modification of the definition of “basic service” for the purposes of the CASF does not modify, and does not prejudice the appropriateness of potential modifications to, the current definition of qualifying “basic service” for the purposes of the California High-Cost Fund - B.

11. Subject to the final evaluation criteria, the Commission may award California Advanced Services Fund support to any certificated entity that proposes to build broadband infrastructure anywhere in the state.

12. The criteria for evaluation should be competitively neutral.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **OPENING COMMENTS OF THE DIVISION OF RATEPYER ADVOCATES ON THE PROPOSED DECISION ADOPTING THE “CALIFORNIA ADVANCED SERVICES FUND”** in **R.06-06-028** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on the 10th day of December, 2007 at San Francisco, California.

/s/ ROSEMARY MENDOZA

Rosemary Mendoza

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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